

**TOWN OF DAVIE
TOWN COUNCIL AGENDA REPORT**

TO: Mayor and Councilmembers

FROM/PHONE: Gary Shimun, Town Administrator / 954-797-1030

PREPARED BY: Phillip R. Holste, Program Manager / 954-797-1041

SUBJECT: Resolution

AFFECTED DISTRICT: 4

ITEM REQUEST: Schedule for Council Meeting

TITLE OF AGENDA ITEM: A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE THE FIRST AMENDMENT TO AN EXISTING MITIGATION AGREEMENT BETWEEN THE TOWN OF DAVIE AND HOME DYNAMICS CORPORATION CONCERNING WETLAND MITIGATION AT THE VAN KIRK SITE; AND PROVIDING FOR AN EFFECTIVE DATE.

REPORT IN BRIEF: This resolution would approve a first amendment to the mitigation agreement between Home Dynamics and the Town of Davie for the Van Kirk site.

The proposed amendment addresses the fill rights for the property. Under the existing agreement, any fill material excavated from the site is the exclusive property of the Town. (Section 11, Page 5.) The mitigation project will create approximately 586,551 cubic yards of fill. The Town will use approximately 54,843 cubic yards of this fill on the Town's portion of the project. The remaining 531,698 cubic yards of fill will be sold to Home Dynamics at \$2.75 per cubic yard. The total value of the fill is \$1,462,170. Since Home Dynamics has agreed to fill, clear, and grub the Town's portion of the Van Kirk site, the fill's value will be reduced by \$250,125.25, the estimated cost of this work. Therefore, the Town will receive \$1,212,044.75 as compensation for the fill. This compensation will be paid in four installments starting with the Town's issuance of the clearing, grubbing, and excavation permits with the final installment paid 6 months after issuance. Per the Town's FCT grant contract, this amendment has been submitted for their review and approval.

PREVIOUS ACTIONS: Van Kirk Mitigation Agreement (R2004-281)

CONCURRENCES: None

FISCAL IMPACT: Yes

Has request been budgeted? n/a

Additional Comments: Town will receive \$1,212,044.75 as compensation for the 531,698 cubic yards of fill.

RECOMMENDATION(S): Motion to approve.

Attachment(s): Resolution, Exhibit A: First Amendment

RESOLUTION _____

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE THE FIRST AMENDMENT TO AN EXISTING MITIGATION AGREEMENT BETWEEN THE TOWN OF DAVIE AND HOME DYNAMICS CORPORATION CONCERNING WETLAND MITIGATION AT THE VAN KIRK SITE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Davie and Home Dynamics Corporation agreed to a agreement for mitigation at the Van Kirk project through R2004-281; and

WHEREAS, the Town of Davie and Home Dynamics desire to amend the agreement; and

WHEREAS, this amendment transfers the rights to the project's fill from the Town of Davie to Home Dynamics; and

WHEREAS, Home Dynamics will compensate the Town \$1,212,125.25 and provide site development services on the Town's portion of the Van Kirk project.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA.

SECTION 1. The Town Council of the Town of Davie hereby approves the aforementioned amendment and authorizes the Mayor to execute the proposed first amendment, a copy of which is attached as Exhibit "A", on behalf of the Town.

SECTION 2. This resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS _____ DAY OF _____, 2007.

MAYOR/COUNCILMEMB

ER

ATTEST:

TOWN CLERK

APPROVED THIS _____ DAY OF _____, 2007.

EXHIBIT A: FIRST AMENDMENT

FIRST AMENDMENT TO AGREEMENT FOR MITIGATION

THIS FIRST AMENDMENT TO AGREEMENT FOR MITIGATION ("First Amendment") dated _____, 2007 ("Effective Date"), by and between the TOWN OF DAVIE, a political subdivision of the State of Florida ("Town") and HOME DYNAMICS CORPORATION, a Florida corporation ("Home Dynamics").

W I T N E S S E T H:

WHEREAS, Town and Home Dynamics entered into that certain Agreement for Mitigation as approved by the Town through its Town Council on April 7, 2005 (the "Agreement"); and

WHEREAS, Town and Home Dynamics desire to amend certain provisions of the Agreement pursuant to the terms and provisions of this First Amendment.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, TEN DOLLARS (\$10) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, each intending to be legally bound, do hereby agree as follows:

1. The foregoing recitals are true and are incorporated in this First Amendment by this reference.
2. Capitalized terms used herein and not expressly defined herein shall have the same meaning as set forth in the Agreement unless the context indicates a different meaning.
3. In case of any conflict or ambiguity between the terms and provisions of this First Amendment and the terms and provisions of the Agreement, the terms and provisions of this First Amendment shall control to the extent of such conflict or ambiguity.
4. The fifth (5th) sentence of Paragraph 12 of the Agreement is hereby deleted in its entirety and the following inserted in lieu thereof:

"Home Dynamics agrees to excavate fill material from the wetlands in conjunction with the described mitigation work estimated to be approximately 586,551 cubic yards of fill. The disposition of the fill material shall be as follows and as more particularly shown on Exhibit A attached hereto:

- (a) Home Dynamics agrees to clear and grub approximately 17 acres of uplands on the Town's Property and spread approximately 54,853 cubic yards of excavated fill material thereon following the issuance of and in accordance with the Permit, License and other applicable permits; and

(b) During the construction phase of the Project, Home Dynamics shall have the right to transfer and utilize the balance of the excavated fill estimated to be 531,698 cubic yards for the sum of \$1,212,044.75 to be paid by Home Dynamics to the Town in accordance with the schedule below (each a "Fill Payment") and commencing following the issuance of all necessary permits to be issued by the Town to Home Dynamics for clearing and grubbing of the Town's Property and excavation of the fill (collectively the "Town Permits").

(i) Initial Fill Payment in the amount \$242,408.95 due at the time Home Dynamics obtains the Town Permits;

(ii) Second Fill Payment in the amount of \$242,408.95 due sixty days following the Initial Fill Payment;

(iii) Third Fill Payment in the amount of \$242,408.95 due sixty days following the Second Fill Payment;

(iv) Fourth Fill Payment in the amount of \$242,408.95 due sixty days following the Third Fill Payment;

(v) Fifth Fill Payment in the amount of \$242,408.95 due sixty days following the Fourth Fill Payment.

In the event a Fill Payment becomes due on a national holiday or Saturday or Sunday, such Fill Payment shall be due on the next business day."

5. Paragraphs 13 and 14 are hereby amended by inserting the name of Gary Shimun as Town Administrator.

6. In all other respects, the Agreement is hereby ratified and confirmed by the parties to be in full force and effect, as amended hereby, and has not otherwise been modified or amended except as set forth herein.

7. This First Amendment may be executed in any number of counterparts, all of which, when taken together, shall constitute one (1) original.

[THIS SPACE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have made and executed this First Amendment on the respective dates under each signature: TOWN OF DAVIE through its TOWN COUNCIL, by and through its Mayor or Vice Mayor, authorized to execute same by the Board action on the _____ day of _____, 2007, and HOME DYNAMICS CORPORATION, signing by and through its President, duly authorized to execute same.

TOWN:

ATTEST:

TOWN OF DAVIE, through its
TOWN COUNCIL

Town Administrator and
Town Clerk
Town of Davie, Florida

By _____
Mayor

____ day of _____, 2007

Approved as to form by
Office of Town Attorney
Town of Davie, Florida
John Rayson, Town Attorney
6591 Orange Drive
Telephone: (954) 584-9770
Telecopier: (954) 797-1023

By _____
Town Attorney

HOME DYNAMICS:

WITNESSES:

Florida

HOME DYNAMICS CORPORATION, a

corporation

Print name: _____

By: _____

David Schack, President

2007
Print name: _____

____ day of _____,

EXHIBIT A



Engineers ♦ Planners ♦ Surveyors

Sun-Tech Engineering, Inc.
1600 West Oakland Park Boulevard
Fort Lauderdale, FL 33311
(954) 777-3123 / Fax (954) 777-3114
E-mail: suntech@suntecheng.com

VAN KIRK FILL PURCHASE ANALYSIS

Total Fill Excavated	586,551cy
Total Fill Utilized on Site For Town	54,853 cy
Fill to be Purchased by Home Dynamics	531,698 cy

Cost of Fill Purchased 531,698 cy x \$2.75/cy = \$1,462,169.50


ADDITIONAL COSTS ITEMS NOT ASSOCIATED WITH CONSTRUCTION OF WETLAND MITIGATION AREA

1. Clear and Grub Town Land 17 acres x \$1,000 = \$17,000
2. Fill 17 acres of Town land on Van Kirk 54,853 CY x \$4.25/Cy = \$233,125.25

TOTAL COST CITY RELATED ITEMS	\$250,125.25
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Home Dynamics fill purchase price	\$1,462,169.50
Offsets for Town-related items	<u>\$250,125.25</u>

Total Cost to Purchase Fill	\$1,212,044.25
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Clifford Loutan, P.E.
For the Firm